

JUNE SMITH

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JANUARY 31, 1956.—Committed to the Committee of the Whole House and ordered to be printed

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Mr. FORRESTER, from the Committee on the Judiciary, submitted the following

R E P O R T

[To accompany H. R. 5778]

The Committee on the Judiciary, to whom was referred the bill (H. R. 5778), for the relief of June Smith, having considered the same, report favorably thereon with amendment and recommend that the bill as amended do pass.

The amendment is as follows:

On Page 1, line 5, strike out "\$3,500" and insert in lieu thereof "\$2,400".

PURPOSE

This bill would pay to June Smith, who was on August 1, 1945, 69 years of age, and who was then employed by the Norfolk & Western Railroad, Norfolk, Va., as a boilermaker and machinists' helper, and who had been at that time so employed for 49 years and 5 months, the sum of \$3,500, by reason of injuries inflicted upon him by United States Navy truck No. 18970, when crossing the street at Burton Station, Princess Anne County, Va., said truck being then and there operated by an enlisted man of the Navy and on authorized Government business. The claimant bases his claim upon loss of wages and pain and suffering.

STATEMENT OF FACTS

The record in this case is outstanding for what it does not show. The claimant contends that he had just gotten off of a public bus, walked to the rear of the bus, and as he stepped from behind the bus into the street he was struck by the Navy vehicle which was proceeding from the opposite direction, and that he sustained a compound fracture of his left leg. The claimant states that the truckdriver carried him to a naval dispensary where he received emergency treatment, his leg placed in a cast, furnished a crutch, and delivered to his home with

The Department of the Navy report does not throw much light upon the surrounding circumstances at the time of the impact. That report does say, however, that the claimant did get off the bus, and as the bus was pulling off, started to cross the street behind the bus; that the Navy truck was traveling in the opposite direction to the bus, and that the driver and the passengers of the Navy vehicle observed the claimant and his companion starting to cross the street; that the driver slowed the vehicle and sounded his horn; that the claimant hesitated and the Navy driver continued on his way; that then the claimant continued to cross the street, and then the driver of the Navy vehicle attempted to avoid hitting him by swerving his truck and applying his brakes, and that the driver of the Navy vehicle stated that immediately prior to seeing the claimant he was driving the truck around 25 miles per hour, but had reduced the speed of the truck to 10 to 15 miles per hour just before the impact. The Navy report agrees that emergency treatment was furnished, but says that X-ray study revealed a simple fracture of the upper end of the fibula without displacement of the fragments, and that there was no evidence of other injury.

The claimant was 69 years of age at the time he received these injuries, and unfortunately this committee must hold that his working days with the railroad would shortly come to an end. He says that he sustained a loss of wages in the sum above set out, but he does not furnish the period of time that these wages were lost. The claimant says that there were hospital bills in the sum of \$185, but in the record it appears that there were no hospital bills and that he removed the cast himself, and that he only consulted a physician. The item constituting pain and suffering is one that must be judged on the type of injuries inflicted. This committee can and does determine, however, that there was some loss of wages and some pain and suffering, and this committee is of the opinion that this claimant should not be turned down completely at the hands of his Government, and should receive some sum adjusted to the facts and the degree of negligence involved, and this committee has determined that \$2,400 is the true sum that should be paid to the claimant in view of all the circumstances, considering that the claimant must pay his attorney. It is the recommendation of this committee that the above bill be amended by striking out the language "\$3,500" appearing on line 5 of said bill, and that "\$2,400" be substituted therefor, and when so amended, that said bill be reported favorably.

Since it has been demonstrated to the committee that an attorney has rendered services in connection with this claim, the bill contains the customary attorney's fee proviso.

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NORFOLK 10, VA., March 11, 1955.

HON. EDWARD J. ROBESON, JR.,  
*Congressman, First Congressional District of Virginia,  
House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN ROBESON: I had previously written to Porter Hardy, Jr. with reference to this matter but forgot that Princess Anne was no longer in the Second Congressional District.

I am writing you concerning a colored man by the name of June Smith of Burton Station, Princess Anne County, and I would like to set out the following facts:

On August 1, 1945, after getting off a public bus at Burton Station, approximately 5 p. m., while the bus was stopped, he walked to the rear of the bus and in attempting to cross the street as he stepped from behind the bus further into the highway he was struck by a Navy vehicle, No. 18970, proceeding from the opposite direction.

A colored woman, who had alighted from the same bus as he, was preceding him across the highway by about 3 feet and she barely got across, but was not struck.

The highway at that point, at that time, was approximately 25 feet wide. At this date, it is considerably wider because of highway improvements, etc.

The Navy truck stopped and carried Smith to the Ford assembly plant, which at that time was probably taken over by the services, to a physician and where his left leg was X-rayed and it showed a compound fracture. After the physician put the leg in a cast, they supplied him with a pair of crutches, put him in the same Navy truck, and carried him to his home at Burton Station.

Smith at that time was 69 years old (he will be 80 on August 18, 1955). At the time of the accident, he was employed regularly by Norfolk & Western Railroad as boilermaker and machinist helper and had been so employed for 49 years and 5 months. Smith was unable to ever return to work because it was impossible for him to stand for any appreciable time on his left leg. He was examined by the Norfolk & Western physicians about a year and half after the accident and they advised him that he was unfit for further railroad work.

Smith has not been employed since the time of the accident because of the leg injury although he is apparently otherwise in very good health. After the

accident, Smith was attended by his own colored physician, Dr. John Webb, who still lives.

Smith has received no damages for the accident nor has any suit ever been instituted nor a private bill in Congress—in fact nothing was ever done for him although on several occasions he had been to see attorneys and for some reason or another, nothing ever came of it.

Approximately 2 years after the accident, Smith was pensioned by the railroad and received for a period of 2 years \$48.50 a month, which was later increased to \$60 a month.

Although he is barred from filing a suit against the United States because of the 6-year limitation, I was wondering if you would discuss the matter with the House committee with reference to a private bill for some award to him for the accident. I might state here, that Mr. Hardy advised me that if it was determined that it was in his district, he would be glad to do so.

Considering his loss of pay for all these years, and he could still be working today and in the light of his life expectancy, I believe a figure of around \$3,500 would see the old man through.

I can furnish you with sufficient evidence of the accident and of course affidavit from him and perhaps other witnesses. I would be very doubtful with reference to any Navy records because I do not know whether the operator of the Navy truck reported the accident. I assume he did, or just what the situation was with reference to the Armed Forces in connection with the Ford plant. I could probably determine something about this.

After giving the matter some thought, I would appreciate a reply from you concerning your reaction.

Thanking you very much, I beg to remain,

Very sincerely yours,

WINSTON H. IRWIN, *Attorney at Law.*

NORFOLK, VA., August 29, 1955.

Re H. R. 5778—June Smith.

Hon. EDWARD J. ROBESON, Jr.,

*First District, Virginia,*

*House of Representatives, Washington, D. C.*

DEAR CONGRESSMAN ROBESON: I am enclosing herewith affidavit of June Smith to be used in connection with the committee's consideration of the subject bill.

I am somewhat at a loss to follow the thinking of Chairman Celler as set out in his letter to you in the second paragraph thereof: "It has been suggested that a statement be secured from doctors as to the extent of this man's injuries, and also a list of expenses incurred in connection therewith."

June Smith was not treated by any civilian doctor after his leg was put in the cast and was taken home by Navy personnel. He was later seen by the Norfolk & Western physician but inasmuch as the accident date did not occur while he was engaged in the course of his employment with the railroad, they have no records of his being treated. And by the same token, there was no expense to him.

It seems to me that the report which the Department of the Navy furnished is certainly evidence enough that the man was injured when struck by the Navy truck. Also, concerning his loss of wages, the railroad has no record of his having been injured except that he was last employed on August 1, 1945, and never returned to the railroad after that date, which is the date of the accident.

I can now state that if the bill succeeds in passing, then his relief would be based on two elements only, that is, his pain and suffering and loss of wages. Loss of wages is set out in his affidavit.

Again, I wish to thank you for your cooperation in this connection.

I beg to remain,

Very sincerely yours,

WINSTON H. IRWIN,  
*Attorney at Law.*

STATE OF VIRGINIA,

*City of Norfolk, to-wit:*

I, Clarence H. Luecking, a notary public in and for the city aforesaid, in the State of Virginia, whose commission expires on the 13th day of April, 1957, do hereby certify that June Smith this day personally appeared before me and being



by me first duly sworn, deposed and said that he was the one and the same June Smith who was struck by United States Navy vehicle No. 18970 while crossing the Highway No. 13, at Burton Station, Princess Anne County, Va., on August 1, 1945 at or about 4:20 p. m., behind the public bus from which he had just alighted, as a result of which he sustained a compound fracture of the left leg midway between the knee and ankle and some injury to his right leg, also badly shaken up and shocked. The deponent further made oath that he was taken to the Ford Motor Co. plant at Newton Park where the Navy had an auxiliary dispensary, where he was treated and his leg was put in a cast and was then taken to his home at Burton Station. The deponent had no expense in connection with this and was advised to consult a civilian doctor thereafter. He further made oath that he was unable to return to his employment which was with the Norfolk & Western Railroad at the roundhouse in Norfolk, Va., where he had been employed for forty-odd years, and that his salary at that time was on the average of \$45 a week. The deponent made oath that he removed the cast himself about 6 months after the accident. He was not treated by a private physician but the railroad doctors examined the leg and advised him that the fracture had healed.

The deponent further made oath that because of the accident he was unable to resume his usual employment with the railroad and although he later received a small pension from the railroad, his actual loss in wages amounted to the sum of \$1,980. The deponent further made oath that outside of the loss of wages, his pain and suffering was the largest element of damages for which he believes he should be compensated if possible and that although he is 79 years of age at this time, he is in excellent health with the exception of the weakness in the leg.

And the deponent saith not.

JUNE SMITH.

Subscribed and sworn to before me this 29th day of August 1955.

[SEAL]

CLARENE H. LUECKING.  
*Notary Public.*

DEPARTMENT OF THE NAVY,  
OFFICE OF THE JUDGE ADVOCATE GENERAL,  
*Washington 25, D. C., June 13, 1955.*

HON. EMANUEL CELLER,  
*Chairman, Committee of the Judiciary,  
House of Representatives, Washington 25, D. C.*

MY DEAR MR. CHAIRMAN: Reference is made to your letter of April 25, 1955 to the Secretary of the Navy requesting comment on H. R. 5778, a bill for the relief of June Smith.

The purpose of this proposal is to authorize the payment of the sum of \$3,500 to June Smith in full settlement of all claims against the United States on account of injury to his leg caused when he was struck by United States Navy vehicle No. 18970 while crossing the street on August 1, 1945, at Burton Station, Princess Anne County, Va.

A review of records available to the Department of the Navy discloses that at about 4:20 p. m. on August 1, 1945, Mr. Smith debarked with a companion from a Norfolk & Southern bus on Highway 13 at Burton Station, Princess Anne County, Va. They walked around the bus and as the bus was pulling off began to cross the road behind the bus. Navy truck No. 18970, operated by an enlisted member of the Navy on authorized Government business, was traveling in the opposite direction to the bus. The driver and the passengers of the Navy vehicle stated that they observed Mr. Smith and his companion start to cross the road; that the driver slowed the vehicle and sounded his horn; that Mr. Smith and his companion hesitated; that the driver then continued on his way; that Mr. Smith then continued to cross the street. Mr. Smith's companion stated that as she walked from behind the bus she saw the Navy vehicle and jumped back. The driver of the Navy vehicle, on seeing Mr. Smith crossing the highway, then attempted to avoid hitting him by swerving the truck away and applying the brakes. Mr. Smith was struck lightly on his right leg, spun around, and caused to fall on his left side. The only evidence contained in the record as to the speed of the Navy vehicle indicates that it was traveling at a speed of approximately 25 miles per hour immediately prior to the sighting of Mr. Smith and his companion by the driver and a speed of 10 to 15 miles per hour just before impact.

Mr. Smith was taken to the Naval Landing Force Equipment Depot dispensary at Newton Park, Norfolk, Va., for emergency treatment. Physical examination revealed an abrasion of the outer surface of the right leg just below the knee and

tenderness of the upper outer portion of the left lower leg. X-ray studies of both revealed a simple fracture of the upper end of the fibula without displacement of the fragments. There was no other evidence of injury. After emergency treatment, Mr. Smith was returned to his home and advised to consult a civilian physician.

On August 10, 1945, Mr. Smith filed claim against the Navy for an "undetermined" amount. Subsequently, in correspondence from Mr. Garrett Baxter, attorney at law, who represented Mr. Smith, it was indicated that Mr. Smith claimed \$3,000 as follows:

Loss of wages	\$1,023.36
Hospital bills	185.00
Pain and suffering	1,791.64

The Federal Tort Claims Act had not been enacted at this time and there was no authority then existing under which the Department of the Navy could make any payment on Mr. Smith's claim. Accordingly, he was so advised. He was also advised that if he wished to pursue his claim against the Government further, it would be necessary for him to seek his relief through a private bill in Congress.

Subsequently, Congress enacted the Federal Tort Claims Act on August 2, 1946, providing a remedy whereby civil action against the United States could be brought upon claims for money damages for injury, death, or loss of property caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office. The Department of the Navy has no record of any such civil action having been instituted by Mr. Smith prior to April 25, 1950. After that date any action would have been barred by the applicable statute of limitations.

In view of the foregoing, the Department of the Navy neither favors nor opposes the enactment of H. R. 5778. It should be noted, however, that the amount of the original claim was \$3,000 and Navy records indicate that such amount was designed to include attorney fees. Furthermore, other than the statement of amounts indicated in the claim as shown above, the Department of the Navy has no information concerning the amount of time Mr. Smith has lost from work, his medical bills, or whether his injuries were temporary or permanent.

The Department of the Navy has been advised by the Bureau of the Budget that there is no objection to the submission of this report on H. R. 5778 to the Congress.

Sincerely yours,

IRA H. NUNN,  
*Rear Admiral United States Navy,*  
*Judge Advocate General of the Navy*  
 (For the Secretary of the Navy).

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